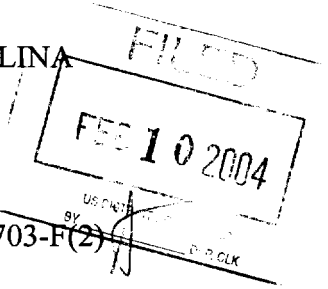


IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION



North Carolina State University and)
Cree, Inc.)

Plaintiffs,)

v.)

Nichia Corporation and Nichia)
America Corporation)

Defendants)

Civil Action No.: 5:00-CV-703-F(2)

**WITHDRAWAL OF ACCUSATIONS
AGAINST CREE'S COUNSEL AND
CONSENT MOTION TO STRIKE THOSE
ACCUSATIONS FROM THE RECORD**

Nichia's undersigned counsel filed two motions to strike Cree's defenses and various additional papers with the Court in which concerns were raised that Cree's counsel may have acted improperly during this litigation. The Court subsequently ordered us to either (1) stand behind our allegations by filing Complaints against Cree's counsel with each of the relevant State Bars or (2) withdraw the accusations and attend a Rule 11 sanctions hearing. In response to the Court's Order, we had Mr. Johnson file a Complaint against Cree's counsel with the North Carolina State Bar on March 8, 2002 and with the California and New York State Bars on July 25, 2002.¹

We raised our concerns regarding Cree's counsel based on inferences that we drew from the information available to us at the time we filed these papers. Since that time, Cree's counsel responded to the above-referenced motions and to our grievances with the State Bars, and further explained its position. Among other things, Cree's counsel submitted several declarations to the Court *in camera*, to which we have not had access. Having received the totality of the

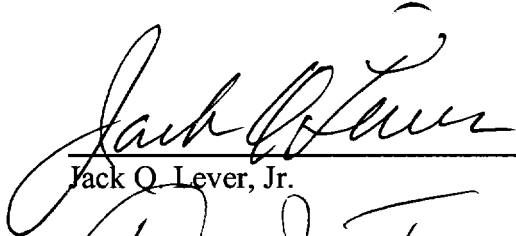
information submitted by both parties, including information submitted by counsel for both parties *in camera* that remains under seal, this Court denied the motions to strike Cree's defenses. By letter dated November 5, 2003, the North Carolina State Bar, similarly, adjudged that there "was not probable cause to believe that the Rules of Professional Conduct were violated" by Cree's counsel. A copy of that letter is attached hereto as Exhibit A and incorporated herein by reference. Based on the determinations made by the Court and the North Carolina State Bar after their review of the totality of available information, it now appears to us that inferences that we originally drew were incorrect.

In light of the above, and subject to the Court's approval of all of the terms of this withdrawal, Nichia's undersigned counsel hereby withdraws all of its previous allegations against Cree's counsel and requests that the Court strike these allegations from the record. Cree's counsel consents to this withdrawal. Nichia's counsel also hereby apologizes to both the Court and Cree's counsel for having raised allegations that, in the light of the determinations of the Court and State Bar and the information not available to us, appear to be erroneous.

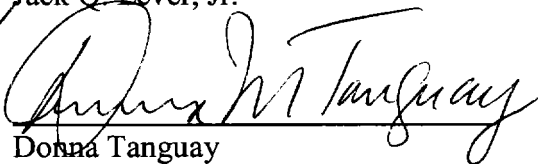
Nichia's counsel also hereby notifies the Court that counsel for the parties have reached an accommodation whereby Cree's counsel has agreed to withdraw its pending request for a hearing. The parties now believe that upon entry of the Consent Order requested by the present motion, all aspects of the above-captioned litigation will be concluded. Cree's counsel will file a paper confirming that they believe that the litigation is now fully concluded and that the case file on this litigation should be closed.

Respectfully submitted this the 10th day of February, 2004.

¹ After the New York State Bar found that our original Complaint did not comply with the rules set forth by the New York State Bar, Alan Rutkoff filed a second Complaint on our behalf with the New York State Bar on February 14, 2003.



Jack Q. Lever, Jr.



Donna Tanguay

McDermott, Will & Emery
600 13th Street, N.W.
Washington, D.C. 20005-3096
(202) 756-8000
(202) 756-8087 (fax)

Robert White Johnson (#2381)
LR 2.04 Counsel
Johnson, Lambeth & Brown
232 Princess Street, P.O. Box 660
Wilmington, NC 28402
(910) 763-0481
(910) 251-1276 (fax)

ATTORNEYS FOR NICHIA
CORPORATION and NICHIA
AMERICA CORPORATION

Fay E. Morisseau

Matthew F. Weil

Michael R. O'Neill

McDermott, Will & Emery
18191 Von Karman Avenue, Ste. 500
Irvine, California 92612-0187
(949) 851-0633
(949) 851-9348 (fax)

George L. Hampton IV

Jack Q. Lever, Jr.

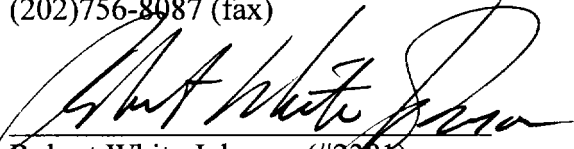
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Irvine, California 92612-0187
(949) 851-0633
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LR 2.04 Counsel
Johnson, Lambeth & Brown
232 Princess Street, P.O. Box 660
Wilmington, NC 28402
(910) 763-0481
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AMERICA CORPORATION

Jack Q. Lever, Jr.

Donna Tanguay

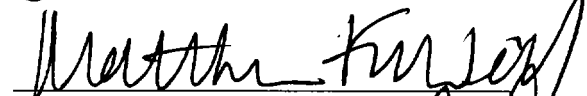
McDermott, Will & Emery
600 13th Street, N.W.
Washington, D.C. 20005-3096
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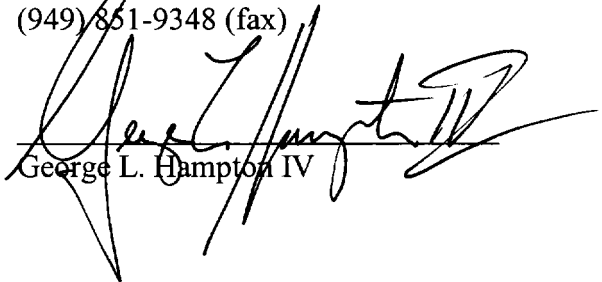
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McDermott, Will & Emery
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Irvine, California 92612-0187
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LR 2.04 Counsel
Johnson, Lambeth & Brown
232 Princess Street, P.O. Box 660
Wilmington, NC 28402
(910) 763-0481
(910) 251-1276 (fax)


George L. Hampton IV

ATTORNEYS FOR NICHIA
CORPORATION and NICHIA
AMERICA CORPORATION



Eric Stevens NC Bar No. 17609



David W. Long NC Bar No. 2779

POYNER & SPRUILL LLP

P. O. Box 10096

Raleigh, NC 27605-0096

Telephone No: (919) 783-6400

Fax No: (919) 783-1075

ATTORNEYS FOR MCDERMOTT, WILL
& EMERY AND ITS ATTORNEYS



The North Carolina State Bar

GRIEVANCE COMMITTEE

Sharon B. Alexander
Chair

November 5, 2003

Ms. Catherine B. Arrowood
Parker Poe Adams & Bernstein LLP
PO Box 389
Raleigh, North Carolina 27602-0389

Re: Grievances against Messrs. Myers, Ayers, Cox, Powers, Antonelli, and Radelescu
Our file nos.: 02G0509, 02G0510, 02G0511, 02G0512, 02G0513, 02G0514

Dear Ms. Arrowood:

As counsel for the above named respondents in a grievance before the Grievance Committee of the North Carolina State Bar, I wish to inform you that the Committee formally considered this matter at its regular quarterly meeting on 23 October 2003. The Committee determined that there was not probable cause to believe that the Rules of Professional Conduct were violated by any of your clients and dismissed the grievance. However, the Committee concluded that there was a good faith basis for the filing of the grievance and wished to make that known to your clients.

If you have questions about this matter you may contact David R. Johnson, the staff attorney assigned to the case. Thank you.

Sincerely yours,

Sharon B. Alexander, Chair
Grievance Committee

SBA/ldm

EXHIBIT A

CERTIFICATE OF SERVICE

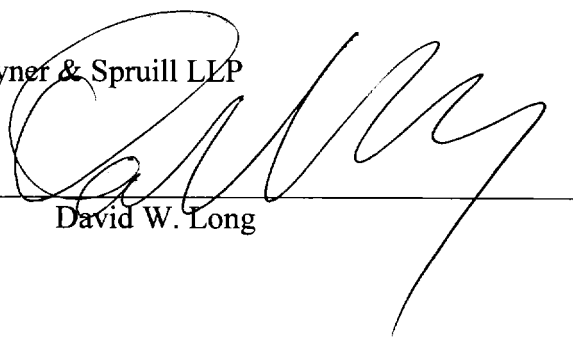
This will certify that Counsel for McDermott, Will & Emery and its attorneys, have this day served a copy of the foregoing pleading upon Cree's attorneys by placing a copy of same in the United States Mail, postage prepaid, properly addressed as follows:

D. Randal Ayers
Myers Bigel Sibley & Sajovec, P.A.
P. O. Box 37428
Raleigh, NC 27627

This the 10 day of February, 2004.

Poyner & Spruill LLP

By


David W. Long